IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SIXTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 13867 of 2004

Between:

Smt. Batta Ananthalaxmi, W/o B. Leelananda Prasad,
Occ: Gram Sarpanch, R/o Ramannapeta, Vetapalem Mandal,
Prakasam District.

..... PETITIONER

AND

The District Panchayat Officer, Ongole.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to pass an order or direction more particularly in the nature of Writ of Mandamus against the respondent declaring the action of the respondent in passing an order in the notice itself as arbitrary, illegal and against the principles of natural justice and consequently, set aside the impugned order passed by the respondent vide No, Roc.No,. 130/2004 (Pts) A1, dated 15-6-2004.

Counsel for the Petitioner: MR.P.RAMA SHARANA SHARMA

Counsel for the Respondent: GP FOR PANCHAYAT RAJ & RURAL DEVELOPMENT

The Court at the stage of admission made the following:

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ORDER:

The petitioner is a Sarpanch of Ramannapeta Gram Panchayat, Vetapalem Mandal, Prakasam District. By impugned order dated 15.6.2004 the respondent herein purporting to exercise power under Rule 42(1) of the Rules issued in G.O.Ms.No. 30 dated 20.1.1995, directed the petitioner not to draw General/S.G.R.Y./E.F.C./S.F.C. funds of Ramannapeta Gram Panchayat of Vetapalam Mandal. By the impugned order, the respondent also authorised the extension officer of Vetapalem Gram Panchayat funds, until furthers. The petitioner was also directed to show cause as to why she should not be prohibited from operating panchayat funds.

A reading of impugned order would show that by a letter dated 14.6.2004 the Divisional Panchayat Officer, Ongole reported that he visited Ramannapeta Gram Panchayat on 13.3.2004 in connection with a petition of S. Subba Rao and others dated 19.1.2004. He further stated that for the year 2003-04, the petitioner purchased electrical goods for Rs.2,76,291/- over and above the ceiling limit, that she spent Rs.23,719/- for repairs and desilting of Gram Panchayat without measuring the work or recording nor the same was valuated by the Engineering authorities, that she spent certain amounts for digging of wells in the Gram Panchayat which are not valuated by Engineering authorities. The Divisional Officer also reported that the petitioner misappropriated the funds and requested the respondent to take disciplinary action against the petitioner under A.P. Panchayat Rat Act, 1994 ('the Act' for brevity).

In this writ petition the impugned order is assailed on the ground that without any prior show cause notice and without any enquiry, the petitioner's power to draw funds of the panchayat have been curtailed, which is illegal and contrary to the provisions of the Act and Rules made thereunder. The learned counsel also submits that the impugned order was passed based on the report of the Divisional Panchayat Officer about which, the petitioner has no knowledge and therefore, the impugned order is unfair and improper.

In spite of the strenuous contentions made by the petitioner, this Court is not inclined to accept the writ petition. In exercise of powers conferred under Section 268 of the Act, the Government promulgated Rules relating to taxes and lodging of moneys received by the Gram Panchayat, payment of moneys from the Gram Panchayat funds (hereinafter called 'the Rules'). Rule 42 of these Rules reads as under:

"42. (1) The District Panchayat Officer concerned may, for sufficient reasons to be recorded in

writing, prohibit by an order any executive authority from drawing the moneys of the Gram Panchayat for such period as may be specified in such order:

Provided that no such order shall be passed unless opportunity of making representation has been given to the executive authority concerned.

Provided further that the District Panchayat Officer may issue an interim direction to the executive authority not to draw the moneys of the Gram Panchayat pending the exercise of this power under this sub-rule.

(2) Any executive authority aggrieved by an order passed by the District Panchayat Officer concerned under sub-rule (1), may prefer an appeal in writing to the District Collector concerned within seven days of the receipt of the order and the decision of the District Collector thereon shall be final.

(3) Every order passed under sub-rule (1) shall specify the name of the person or the authority who shall draw the moneys of the Gram Panchayat during the period during which the executive authority is prohibited from drawing such moneys.

(4) A copy of every order passed under sub-rule (1) or sub-rule (2) shall be communicated to all banks and treasuries in which the moneys of the Gram Panchayat are lodged.

(5) On and from the date of receipt of such order by any bank or treasury, no payment shall, for the period specified in such order, be made to the executive authority who is prohibited by such order from drawing the moneys of the Gram Panchayat."

A plain reading of the Rule would show that it is competent for the District Panchayat Officer for reasons to be recorded, in writing, to prohibit any executive authority from drawing the moneys of the Gram Panchayat for a specified period. However, such prohibitory order cannot be passed unless opportunity of making representation is given to the executive authority concerned. This is again subject to second proviso to sub-rule (1) of Rule 42, which is to the effect that pending passing of an order under Rule 42(1), it is always competent for the District Panchayat Officer to issue an interim direction to the executive authority not to draw the moneys of the Gram Panchayat. By impugned order, the respondent directed the petitioner not to draw the moneys of Gram Panchayat pending further action as per Rule 42(1) and first proviso of the same. Indeed, the petitioner was asked to submit a show cause notice as to why the powers of the petitioner to draw the funds should not be curtailed. The petitioner appears to have already submitted an explanation to the respondents and therefore, at this stage no interference is called for. The petitioner may approach the respondent with a request to consider her representation/explanation expeditiously. As and when the petitioner approaches by any representation, the respondent shall pass final orders under Rule 42(1) of the Rules within a period of three weeks from the date of the representation. In this writ petition no relief can be granted to the petitioner.

The writ petition, with the above observations, is dismissed. No costs.

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(V.V.S.RAO, J)

6th August 2004

Tsr.

To

1 The District Panchayat Officer, Prakasam District, Ongole
2 Two CCs to Government Pleader for Panchayat Raj & Rural Development, High Court Buildings, Hyderabad. (OUT).

3 Two CD copies.